***THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

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W.P.No. 2635 OF 2005

A N D

+W.P.No. 2997 OF 2005

% 29-11-2005

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W.P.No. 2635 OF 2005

G.Mohan Goud …Petitioner

A N D

$1. The State Election Commission,

Hyderabad (Buddabhavan) and Others …Respondents

W.P.No. 2997 OF 2005

U.Yugandhar …Petitioner

A N D

$1. The State Election Commission,

Hyderabad (Buddabhavan) and Others …Respondents

Counsel for the Petitioners: A.K.JAYAPRAKASH RAO

Counsel for the Respondents 1 AND 3: K.VENKATEH GUPTA

Counsel for the Respondent No.4 R.V.SUBBA RAO

Counsel for the Respondents 1and 2 G.P. FOR REVENUE

> Head Note :

? CITATIONS :

1. 1999(10) Supreme 99
2. (1996) 1 Supreme Court Cases 169
3. (1996) Supreme Court Cases 351
4. 2003(7) Supreme 456
5. 2004(5) ALT 400
6. 2005(1) ALT 403

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 2635 OF 2005

AND

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-

29TH November, 2005

Between:

W.P.No. 2635 OF 2005

G.Mohan Goud …Petitioner

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1. The State Election Commission,

Hyderabad (Buddabhavan) and Others …Respondents

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 2635 OF 2005

AND

W.P.No. 2997 OF 2005

COMMON ORDER :

1. These two petitions are filed seeking writ of certiorari to quash the order of Election Tribunal-Cum-Junior Civil Judge, Gadwal passed in E.O.P.No. 6 of 2001, dated 18-1-2005. Hence, both the writ petitions are heard together and are being disposed of by this common order.

2. By the impugned order the Election Tribunal set aside the election of G.Mohan Goud-4th respondent in EOP.6/2001 as Sarpanch of Grampanchayath, Ghattu and directed to conduct fresh election as early as possible.

3. W.P.No. 2997 of 2005 is filed by U.Yugandhar-petitioner in E.O.P.No. 6 of 2001 assailing the order to the extent of his not declaring as duly elected after setting aside the election of Respondent No.4-G.Mohan Goud therein.

4. W.P.No. 2635 of 2005 is filed by G.Mohan Goud-Respondent No.4 in E.O.P.No.6 of 2001 assailing the order to the extent of setting aside his election as sarpanch of Ghattu village.

5. The parties herein after referred to as they are arrayed in Election O.P. 6 of 2001, on the file of Election Tribunal-cum-Junior Civil Judge, Gadwal.

6. The facts of the case leading to filing of these two writ petitions in brief are:

7. U.Yugandhar-petitioner and G.Mohan Goud-4th respondent contested the election for the post of Sarpanch of Grampanchayath Ghattu village. The election was held on 14-8-2001. The petitioner secured 909 votes and whereas the 4th respondent secured 1193 votes and accordingly the 4th respondent came to be declared as duly elected. The petitioner filed election O.P.No.6 of 2001 to set aside the election of 4th respondent as the Sarpanch of Ghattu village for his resorting to corrupt practices during the election. The grounds urged by the petitioner to set aside the election of the 4th respondent are: Firstly, he dominated the will of the voters by depositing a sum of Rs. 4,00,000/- in favour of Sri Laxmi Venkateshwara Jeernodharana Committee, Ghattu in State Bank of India, Gattu Branch. Secondly, he lured the voters to cast their votes in his favour by distributing sarees and banians. Thirdly, he influenced the mind of the voters by providing toddy. Fourthly, deletion of the names of some of the voters in the list.

8. Respondents 3 and 4 filed counter affidavits. Respondents No. 1 and 2 filed memo adopting the counter of the 3rd respondent. Respondent No.3 took the plea that election came to be conducted peacefully without any complaint. It is further stated in the counter affidavit that after counting, respondent No.4 secured more number of votes and thus 4th respondent has been declared as duly elected. Respondent No.4 filed counter affidavit denying of his depositing the money to dominate the will of the voters and also supply of Banians, Sarees and toddy to the voters. The learned Election Tribunal formulated the following points for consideration:-

1. Whether the petitioner is entitled for declaration of election of the 4th respondent is void on the ground of corrupt practice?

2. To what relief?

9. On behalf of the petitioner he got himself examined as PW-1 and examined E.Shiva Shankarappa as PW-2, P.Hanmanth Reddy as PW-3, Devanna as PW-4 and Brahmaiah as PW-5 and marked eight documents as Exs. A-1 to A-8. On behalf

of the respondents No.1 to 3, RW-1 was examined and on behalf of Respondent No.4 he got himself examined as RW-2 and examined one Veeranna as RW-3 and Mohd. Ghouse as RW-4. On considering the evidence brought on record and on hearing counsel for both the parties, the learned Tribunal recorded a finding that the 4th respondent resorted to mal-practices in the election process and thereby allowed the election O.P. partly setting aside the election of the 4th respondent as sarpanch. However, the learned Tribunal refused to declare the petitioner as duly elected after setting aside the election of the 4th respondent. Hence, writ petition No. 2997 of 2005 is filed by the petitioner aggrieved by the order to the extent of his not being declared as duly elected Sarpanch and whereas W.P.No.2635 of 2005 is filed by the 4th respondent assailing the order of setting aside his election as Sarpanch of Ghattu village.

10. Heard learned counsel for both the parties.

11. It is suffice to refer the parties as they are arrayed in W.P.No.2635 of 2005. At the costs of repetition, I may state that the petitioner-G.Mohan Goud and 4th respondent U.Yugandhar in W.P.No.2635 of 2005 are 4th respondent and petitioner respectively in the Election O.P.No.6/2001.

12. Learned counsel appearing for the writ petitioner submits that the learned Election Tribunal recorded findings on mere conjectures and surmises and thus the findings recorded by the learned Election Tribunal are liable to be set aside. He further submits that finding of the learned Election Tribunal that PW-4 has not canvassed for the election petitioner-PW-1 is contrary to the evidence brought on record and thus the order of the learned Tribunal is liable to set aside. He took me to the evidence of witnesses and also the findings recorded by the learned Election Tribunal to convince that the findings recorded are contrary to the evidence brought on record. A further submission has been made that Ex.A-6 Part-I Case Diary in Cr.No.38 of 2001 of P.S. Ghattu dated 13-8-2001 does not indicate that the writ petitioner supplied toddy at free of cost to the voters to induce them to cast their votes in his favour. In support of his submission reliance has been placed on the decisions of ***Jeet Mohinder Singh Vs. Harminder Singh Jassi, Manohar Joshi Vs. Nitin Bhaurao Patil, Dr. Vimal Vs. BhagujiState of Andhra Pradesh Vs. P.V. Hanumantha Rao.***

13. In the first cited decision the Supreme Court held that the success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the Court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as reelection involves enormous load on the public funds and administration. In second cited decision, the Supreme Court held that in order to constitute corrupt practice it must be shown that the act was done during the election campaign between the date when the returned candidate became a 'candidate and the date of poll, and that it was the act of the candidate or his agent or any other person with his consent. Unless all these constituent parts of the corrupt practice are pleaded to constitute the cause of action raising a triable issue and are then proved by evidence, the corrupt practice cannot be held to be pleaded and proved. In the third cited decision the Supreme Court held that since the evidence about the foundation of corrupt practice alleged against the appellant is not clinching and unimpeachable, the finding of corrupt practice against the appellant having serious civil and criminal import is not warranted in the facts and circumstances of the case. In the fourth cited decision, the Supreme Court held that the Special Court on unsubstantial grounds had rejected their claims to title and possession of the land. The High Court in its writ jurisdiction was, therefore, fully justified in examining those documents of title and upsetting the judgment of the Special Court on the ground that material evidence and circumstances proved by the occupants were over looked in holding the occupants as land grabbers.

14. Learned counsel appearing for the 4th respondent (petitioner in Election O.P.No.2635 of 2005) submits that the learned Election Tribunal considered the evidence brought on record in right perspective and recorded a finding that the petitioner herein resorted to mal-practices in the election process. However, it is submitted by him that the Election Tribunal having set aside the election of the writ petitioner herein committed error in not declaring the 4th respondent herein as duly elected as sarpanch of Ghattu Grampanchayat. In support of his submissions, reliance has been placed on the decisions of our High Court in

R.Jayalakshammam Vs. Election Tribunal-cum-Senior Civil Judge, Punaganur, Simmiti Arjuna Vs. Pappala Narasaiah, and the decision in W.P.No. 8965 of 2003 dated 25-08-2005 (M.Kurumanna Vs. the Hon'ble Junior Civil Judge-cum-Election Tribunal at Narayanpet and others). In **R.Jayalakshamma's** case (5th cited supra) it has been held that while judicially reviewing the decision of a statutory tribunal, High Court ordinarily does not substitute its opinion for the opinion or finding recorded by the Tribunal on appreciation of oral and documentary evidence. Merely because other view is also possible from such re-appreciation of same evidence, it cannot be a ground for High Court to deviate from the finding of the fact recorded by the Tribunal, re-appreciate the evidence on record and give its own finding which is different from the finding recorded by the Tribunal. It is axiomatic that the Court of Judicial review is not an appellate Court and the Court essentially reviews the decision making process rather than decision itself. Nonetheless, it is also settled that when the question is raised that the tribunal has committed jurisdictional error or committed grave error apparent on the fact of the record while appreciating the evidence, recording findings of fact and applying law to such findings on fact, the Court of judicial review can always, curiously though, look into the evidence to see whether the finding of fact is perverse and whether the proper principles of appreciation of evidence has been applied to the facts. Even after such exercise, if the Court finds that the findings are grounded on substantially acceptable evidence, the findings cannot be upset and re-appreciation of evidence as an appellate Court is not within the purview of judicial review.In **Simmiti Arjuna's (**6th cited supra) case it has been held that *E*lection Tribunal, while declaring election of elected candidate as invalid, cannot grant incidental relief that election petitioner has got duly elected unless he pleads seeking such a declaration and proves that he received majority of the valid votes. *In* **M.Kurumanna's** case (cited lastly supra) it has been held that in a writ of certiorari the scope of judicial review is restricted and normally the interference of the Court is warranted only where the findings recorded by the Tribunal below are not based on any evidence or where the order is vitiated on account of inherent lack of jurisdiction or where the Tribunal has committed a grave error apparent on the face of the record. It is a well settled principle that this Court while judicially reviewing the decision of the statutory Tribunal will not indulge in reappreciation of evidence as an appellate Court and substitute its own opinion for the opinion of the Tribunal below.

15. It is well settled that success of a candidate who has own an election should not be lightly interfered with and any petition seeking such interference must strictly confirm to the requirement of the law. It is also equally settled that in order to constitute corrupt practice it must be shown that the act was done during the Election campaign between the date when the returned candidate became a candidate and the date of poll. The requirement of proof of corrupt practice at the time of election is higher and confined to strict legal evidence.

16. 4th respondent challenged the election of the writ petitioner as Sarpanch of Grampanchayath on four grounds stated supra. The learned Election Tribunal recorded a finding that the 4th respondent herein, who is petitioner, failed to prove the fact of removal of names of the voters in the list and thus the grounds left over are only three. The first ground is deposit of Rs.4,00,000/- in the name of Sri Laxmi Venkateshwara Swamy Temple, Ghattu to dominate the will of the voters. It is no more in dispute that an amount of Rs.4,00,000/- was deposited by the petitioner in State Bank of India, Ghattu branch. It is the contention of the petitioner that he deposited the amount so as to get his election unanimously and since the election proved to be not unanimous, he withdrew the amount.

17. PWs-1 to 4 stated in one voice that the 4th respondent in the Election Petition has deposited Rs. 4,00,000/- in the name of Sri Laxmi Venkateswara Jeernodharana Committee and he withdrew the amount only after declaration of the results. It goes without saying that the amount deposited in the name of Sri Laxmi Venkateswara Jeernodharana Committee was subsisting through out the election process. This fact is confirmed by certificate issued by the State Bank of India Manager which has been exhibited as Ex.A-2. PW-2 speaks of the deposit of Rs.4,00,000/- by writ petitioner. Nothing is suggested to him in the cross-examination disputing of the writ petitioner depositing Rs.4.00 lacs to the credit of Sri Laxmi Venkateswara Jeernodharana Committee. It is clearly established from the evidence brought on record that the writ petitioner, who is 4th respondent in the Election Petition, deposited Rs.4,00,000/- in the name of Sri Laxmi Venkateswara Jeernodharana Commiteee and allowed the deposit to subsist through out the election process in spite of the fact of the petitioner not withdrawing from the contest.

It can be said with certainty that the deposit of the amount in the name of Sri Laxmi Venkateswara Jeernodharana Committee the writ petitioner (4th respondent in the election petition) must have dominated the will of the voters. The other ground urged is; distribution of banians with the symbol of the writ petitioner. One of such banians is marked through PW-1. Nothing is suggested to PW-1 disputing of his distributing banians like Ex.A-7 to the voters. I deem it appropriate to refer cross-examination of PW-1 and it is thus:

> Cross-Examination by AGP for R-1 to R-3.
>
> "*I was not present when R-2 promised that he would deposit Rs.4,00,000/- if he is made unanimous. I did not make efforts for stay of election. Before polling I did give any complaint to election Officer. It is not true to suggest that Excise case is not related to election. I did not challenge validity of voters list. I came to know the missing of names of voters on the date of polling. It is not true to suggest that I have made false allegation against election officers. It is not true to suggest that I have filed this petition as I was defeated".*
>
> *Cross Examination by SS for R-4*
>
> *R-4 and his agents made proposal for unanimous election. I was not present at the time of proposal. Generally, people used to make donations to temple. It is not true to suggest that I have deposited Rs.2,00,000/- for Venkateswara Temple of Gattu. I have not made any mention of Janodharana Committee. I have not filed any paper of the committee, but I have filed document given by Bank Manager. I am not related to Jeernodharana Committee. It is not true to suggest that Shamrappa and Ramakrishna Reddy are well acquainted with me. I am a leading lawyer and I might be having acquaintance with so many people. One Srinivas who is news contributor is of my caste. IT is not true to suggest that R-4 is not selling toddy. It is not true to suggest that R-4 never supplied toddy to the voters. There are cases against the agents of R-4 for free supply of toddy .*

18. PW-4 speaks of writ petitioner (4th respondent in the election petition) supplying Banians and he is one among many persons who received banians. It is crystal clear from the evidence brought on record that the writ petitioner (4th respondent in the election petition) had distributed Banians with his symbol and Ex.A-7 is one such Banian distributed by him. The other grounds alleged by the petitioner is

supply of toddy at free of costs. The only evidence to substantiate this ground is Ex.A-6-case diary. The contents of Ex.A-6 disclose that one Munnuru Narsimloo was selling toddy @ Rs. 3.50 each bottle and he was found in possession of 11 cases of toddy comprising 24 bottles of toddy in each case. It is no where stated in the case diary that toddy was being supplied at free of costs at the instance of the writ petitioner (4th respondent in the Election Petition). Therefore, the finding recorded by the Election Tribunal that the writ petitioner (4th respondent in the Election Petition) distributed toddy at free of costs is not based on any evidence.

19. With regard to other two grounds, the findings recorded by the Election Tribunal are based on evidence and they do not warrant any interference by this Court. Section 211 of A.P. Grampanchayath Act, defines corrupt practices which reads as follows:

> "*1) Briber, that is to say:*
>
> *A) Any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate of his election agent, of any gratification to any person whomsoever, with the object, directly or, indirectly of inducing.*
>
> a. *A person to stand or not stand to as or to withdraw or not to withdraw from being a candidate at an electio, or*
>
> b. *An elector to vote or refrain from voting at an election, or as a reward to:*
>
> iii. *A person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature, or*
>
> i. *An elector for having voted or refrained from voting.*
>
> *B) The receipt of, or agreement to receive, any gratification, whether as a motive or a reward.*
>
> a. *By a person for standing or not standing as or for withdrawing or not withdrawing from being a candidate, or*
>
> b. *By any person whomsoever for himself or any other person for voting or refraining from voting or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature".*

20. Depositing of Rs. 4,00,000/- in the name of Sri Laxmi Venkateswara Jeernodharana Committee and allowing the deposit to subsist through out the election process and distribution of banians with the symbol of writ petitioner (4th respondent in the election petition) came within the meaning of corrupt practices as defined in Section 211 of the Act. Thus, the Election Tribunal is justified in setting aside the election of the writ petitioner (4th respondent in the election petition).

21. Learned counsel appearing for the petitioner in W.P.No. 2997 of 2005 contends that the Election Tribunal having set aside the election of the 4th respondent in the Election Petition ought to have declared the election petitioner as duly elected candidate. I do not see any substance in his contention, since it could not be said with certainty as to how many voters were influenced by the malpractices resorted to by 4th respondent in the election petition and how many of those persons would have cast their votes, had there been no such malpractices.

22. In these circumstances, the Election Tribunal is justified in not declaring the election petitioner as duly elected after setting aside the election of 4th respondent therein. Accordingly, I find that both the writ petitions are devoid of merits.

23. In the result, both the writ petitions fail and they are accordingly dismissed. No order as to costs.

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Justice B.Seshasayana Reddy

29th November, 2005.

L.R. copy to be marked

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